

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION**

DARRYL W TYSON, JR
Reg #20129-078

PETITIONER

VS. CASE NO. 2:17-CV-150-DPM-BD

**GENE BEASLEY, Warden,
Federal Correctional Institution-Low,
Forrest City, Arkansas**

RESPONDENT

RECOMMENDED DISPOSITION

I. Procedure for Filing Objections

The following Recommended Disposition ("Recommendation") has been sent to Judge D. P. Marshall Jr. Either party may file written objections with the Clerk of Court within fourteen (14) days of the filing of this Recommendation. Objections must be specific and must include the factual or legal basis for the objection. An objection to a factual finding must identify the finding of fact believed to be wrong and describe the evidence that supports that belief.

By not objecting, any right to appeal questions of fact may be jeopardized. And, if no objections are filed, Judge Marshall can adopt this Recommendation without independently reviewing the record.

II. Introduction

Darryl W. Tyson Jr. filed this petition for writ of habeas corpus under 28 U.S.C. § 2241. (Docket entry #1) He has paid the filing fee. (#2)

In the petition, Mr. Tyson challenges the 135-month federal sentence he received in the United States District Court for the Eastern District of Texas. *United States v. Tyson*, Case No. 4:12CR143-01-ALM-KPJ, Docket entry #207 (E.D. Tex., Apr. 17,

2014). He requests a modification or reduction of the sentence based on an amendment to section 3B1.2 of the United States Sentencing Guidelines.

For reasons explained in this Recommendation, Judge Marshall should transfer the Petition to the sentencing court.

III. Background

On April 16, 2014, a federal judge in the Eastern District of Texas sentenced Mr. Tyson to 135 months' incarceration after he pleaded guilty to one count of conspiracy to possess with intent to distribute cocaine base.¹ *Id.* at docket entry #206. Mr. Tyson did not appeal his conviction or sentence. Instead, he filed two motions for sentence reduction, which the sentencing court denied. *Id.* at docket entry #244, #261, #265, and #266. In its order denying Mr. Tyson's second motion for sentence reduction, the trial court noted a circuit split regarding the retroactivity of the amendment to section 3B1.2. *Id.* at docket entry #266. As explain below, regardless of the merits of Mr. Tyson's claims, it is the sentencing court, not this Court, that should consider the petition.

IV. Discussion

This Court is without jurisdiction to hear Mr. Tyson's habeas corpus petition. A challenge to the validity of the sentence itself must be brought under 28 U.S.C. § 2255 in the district of the sentencing court. *Matheny v. Morrison*, 307 F.3d 709, 711 (8th Cir.

¹Mr. Tyson is currently serving his sentence at the Federal Correctional Institution in Forrest City, Arkansas.

2002) (citing *Bell v. United States*, 48 F.3d 1042, 1043 (8th Cir. 1995)); accord *Alevras v. Snyder*, No. 99-2467, 1999 WL 1059831 (8th Cir. Nov.16, 1999). Because Mr. Tyson's claim is a challenge to his sentence, it can be brought only in the Eastern District of Texas.

This Court would generally recommend dismissal of a petition where there is no jurisdiction. But instead of dismissal, Judge Marshall should transfer this petition to the Eastern District of Texas. Under 28 U.S.C. § 1631, a court that lacks jurisdiction over a civil case still has the power to transfer the case to a court where the action could have been filed, "if it is in the interest of justice" to do so. The Eastern District of Texas has jurisdiction to address the merits of the pending petition. 28 U.S.C. § 2255. The petition may raise an important question of unsettled law. In addition, dismissal of this petition could complicate Mr. Tyson's ability to file a habeas petition within the statute of limitations.

V. Conclusion

The Court recommends that Judge Marshall transfer Darryl W. Tyson Jr.'s Petition for Writ of Habeas Corpus (#1) to the Eastern District of Texas.

DATED this 8th day of September, 2017.


UNITED STATES MAGISTRATE JUDGE